LIM NEE THIAM & ORS.

v.

THE COLLECTOR OF LAND REVENUE, KUALA PILAH

HIGH COURT MALAYA, SEREMBAN
PEH SWEE CHIN J
[ORIGINATING MOTION NO. PF 12 OF 1984]
18 JULY 1985

LAND LAW: *Compulsory acquisition and compensation - Objection - Collector's duty under Form N - Conflicting evidence - Extension of time - Section 38(3) of Land Acquisition Act 1960.*

The applicants had attended an enquiry on 10 February 1984 to determine the award of compensation for the compulsory acquisition of their land pursuant to the Land Acquisition Act 1960 ("the Act"). At the hearing they objected to the compulsory acquisition and to the compensation awarded. The applicants alleged that the Collector had agreed to do the necessary on their behalf to challenge the acquisition and the award. The Collector however alleged that he had advised the applicants that they could object by filing the requisite Form N so that the matter could be referred to the High Court for determination.

The applicants contended that they were not out of time because Form G prescribed under s. 14 of the Act had not been served on them. The Collector said that Form G was not relevant on this point. The applicants were out of time, however, as they should have made the applications within 6 weeks from 10 February 1984, i.e. the date of the award. The Court had therefore to decide whether to grant the applicants an extension of time as asked for pursuant to s. 38(4) of the Act which provides *inter alia* the Court may do so in special circumstances as the Court may think fit.

Held:

[1] The allegation that the Collector had advised the applicants of their right to have the matter referred to the High Court for determination does not have sufficient *prima facie* plausibility to merit further investigation into the truth of the allegation. It was more probable that the applicants were not advised as alleged.

[2] That hardship, ignorance of law, *bona fide* mistake, combined with absence of any fault on the part of an applicant praying for extension of time may constitute special circumstances as stated in s. 38(3), sufficient for the Court to exercise its discretion to grant extension of time in such cases.

[Application allowed. Respondent to pay costs of this motion.]

Cases referred to:

Lau Cher Hian v. Collector of Land Revenue, Muar [1971] 1 MLJ 96
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 214
Ong Leong Seng & Anor. [1958] 24 MLJ 179
Nusserwanjee Pestonjee v. Meer Mynoodeen Khan W.M. Bahadoor 6 Moo. IA 134

Legislation referred to:

Land Acquisition Act 1960, ss. 14, 38(3)(a), (4), 39
Land Acquisition Ordinance [Sing], s. 19(4)

For the applicants - A.K.J. D'Cruz; M/s A.K.J. D'Cruz & Co.
For the respondent - Abu Samah bin Nordin, State Legal Adviser, Negeri Sembilan

JUDGMENT

Peh Swee Chin J:

This case highlights once more predicament of landowners, especially those from the rural areas, who have every intention of challenging an award made by a collector of land revenue under Land Acquisition Act, 1960 in Court but who find themselves time-barred, for what Ong CJ, said in *Lau Cher Hian v. Collector of Land Revenue, Muar* [1971] 1 MLJ 96, 98 for "not having the volume of 1960 legislation for reference", viz. the Land Acquisition Act, 1960, (hereinafter called the Act).

The applicants herein, of Kampong Melang, Kuala Pilah apply, in effect, for extension of time for making an application in Form N as prescribed by the Act, to the Collector of Land Revenue, Kuala Pilah, requiring the latter to refer to the Court for its determination, the objection of the applicants as to the inadequacy of the award of compensation made by him.

The facts appear to be as follows. The applicants, duly attended an enquiry to determine such award on 10 February 1984, apparently in pursuance of notice of hearing of the same. At the hearing, they objected then, as appears from the notes of evidence recorded by the said collector, even to the compulsory acquisition of their interest in the land in question. They most probably did not realise that the nature of such objection, especially based on the ground of application for sub-division of land was doomed to failure. It does indicate the applicants' antagonism to such acquisition, and inferentially, to any award of compensation issuing out of such acquisition proceedings, I pause to observe.

The applicants alleged that they had requested the collector at the inquiry to assist the applicants to challenge the acquisition and the compensation awarded and that they left the enquiry under the belief that the collector would take the necessary steps on their behalf in challenging the acquisition and the award. On the other hand, the collector in his affidavit alleged that he had in fact advised the applicants that they could make an objection by filing the requisite Form N at his office (i.e. for the purpose of requesting the collector to refer the matter to Court). About this conflict in these two opposing allegations from the applicants and the collector respectively, I will deal with it later.

Then in October 1984, the collector sent a letter, all apparently dated 1 October 1984, each to each of the applicants asking them to bring their identity cards along and to call on the collector in connection with payment of the award of compensation. The letter apparently called on the applicants to receive their compensation.

In or about October 1984, the applicants referred the matter to DYMM Tuanku Yang Di Pertuan Besar, Negeri Sembilan and the Ruler wrote to the collector stating that in his view, the land proposed to be for use as a mosque was not good for such use, and suggested that such proposal be abandoned and that another piece of land not owned by a non-Muslim Chinese, be searched for instead.

The collector in a letter dated 7 November 1984 stated that the matter, (apparently the matter raised by the Ruler), was referred to the State Authority and had been turned down. It is interesting to observe, by the way, that the State Authority is defined under the National Land Code as the Ruler or Governor as the case may be. I pause to make another observation. It is not inconceivable that the applicants, being unsophisticated, could have thought that by appealing to the Ruler, that they were engaged in challenging the award. The Ruler in

response always to pleas for help from his rakyat, had once more stepped in to assist them. This appeal to the Ruler indicates once more that they had not resigned to accepting the award of compensation peaceably.

I think the allegation of the collector that he had explained or advised the applicants at the enquiry that they could lodge a Form N with him in lodging an objection against the award of compensation is improbable and inconsistent with their appeal to the Ruler instead of the High Court, and their conduct which evinced their opposition towards the acquisition, and by clearest of implication, and the award of compensation. Such antagonism was demonstrated by their statement that they had applied for sub-division, which any landowner knows, results in the appreciation in value of his land. They had all signed the Form H (notice of award and offer of compensation), by stating that they did not accept the offer. They appealed to the Ruler. Further when advising them, the collector, as appears from his affidavit dated 14 May 1985, never mentioned the venue of High Court nor that they could have the matter referred to High Court. The mere mention of Form N, without mentioning the High Court in connection therewith could hardly communicate clearly the procedure of challenging the award.

After due consideration, I am of the view that the allegation that the collector had advised the applicants of their right to have the matter referred to High Court for determination does not have sufficient *prima facie* plausibility to merit further investigation into the truth of such allegation by taking detailed oral evidence to resolve the said conflict on the affidavits. On the other hand, it is far more probable that the applicants were not told or advised as alleged.

Resolution of conflict of evidence on affidavit is an ever-recurring practice in High Court and it is not always inappropriate, depending as it does, on the nature of conflict and the circumstances in each case. I will quote a passage from the judgment of Privy Council in *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 214, 217:

> ... Although in the normal way it is not appropriate for a Judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be. In making such order on the application as he "may think just" the Judge is vested with a discretion which he must exercise judicially. It is for him to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon a relevant fact have sufficient *prima facie* plausibility to merit further investigation as to their truth.

After considering the evidence in this case, I find that when they left the inquiry, the applicants were under the mistaken belief that the collector would assist them in challenging the acquisition and the award of compensation.

Learned Counsel for the applicants, in relying on the affidavit filed on behalf of the applicants, and dealt with above, also submitted that hardship was caused to his clients who were not at fault. He cited the case of *Lau Cher Hian v. Collector of Land Revenue, Muar, supra.* I need not refer to other cases cited. Counsel also submitted that Form G prescribed under s. 14 of the Act was not served on his clients and therefore the period of six weeks for the application to the collector for the matter to be referred to Court had not begun to run, i.e. his clients were not out of time thereby.

Learned Legal Adviser in his reply, referred to the advice given by the collector to refer the matter to Court. This of course has been disposed of by me on the view I have just taken. He submitted further that the collector was not obliged to serve the said Form G. No special circumstances had been established. The case of *Lau Cher Hian* was distinguishable because in that case the landowner's brother was not served with the notice in question there. Of the cases cited, I need refer only to the application by *Ong Leong Seng & Anor*. [1958] 24 MLJ 179.

I will take the point of Form G first. I do not think there is any substance in it for I agree that the collector was not obliged to serve the said Form G on the applicants as s. 14 does not mention such a requirement at all while other parts of the Act always emphasize in express words, service of certain documents which are required to be served and such similar express words are conspicuous by their absence in regard to the said Form G. Further, the purpose of Form G would appear to be a matter of record or internal administration, it having been required merely to be filed in the office of the collector.

It now becomes necessary to consider whether on the materials before the Court, that extension of time as asked for, ought to be granted. There can be no doubt that the applicants were about eight months out of time, for they should have made the application within six weeks from 10 February 1984 when the award was made, the six weeks' period having been prescribed by s. 38(3)(a) of the Act. Extension of time must have been asked for under s. 38(4) which reads:

> The period of six weeks prescribed by para. (a) of subsection (3) and the periods of six weeks and six months prescribed by para. (b) of subsection (3) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.

It is time that the case of *Lau Cher Hian* was looked at very much more closely because it is a decision of the then Federal Court, which is binding on this Court. The landowner in that case, on receipt of the notice of award in February, had notified that she did not accept the award. She wanted to wait for her brother, a co-owner of the land in question to consult him on a common line of action. In the meantime, the time for applying for the matter to be referred to Court expired. The Federal Court unanimously held that there was hardship in the circumstances to the landowner who was not in the least at fault and the Federal Court observed that there was a possibility of adjustment of the landowner's claim by reason of the award made to the brother. The Federal Court also remarked on the fact that the notice of offer and award of compensation, (Form H) had contained no reference at all to the requirement for written application to be made within six weeks for reference to Court. Ong CJ said at p. 98:

> ... Three paragraphs were devoted to acceptance, but only a single one to refusal of the offer. Might another not have helped, advising what should be done when an objection is made? The advice was rather liberal in relation to accepted offers. It seems to me that those in authority should have more tender regard for the fundamentals of fair procedure. When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment. That, I believe, to be the reason why the Court is given a discretion to temper the rigidity of the law. "Special grounds" were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, *bona fide* mistake or mere "ignorance of the law" should be left out altogether when considering special grounds. What are special grounds must be decided according to the facts of each case. Section 44(2) I think affords an example of what should be considered a special ground, viz:

(2) The Court shall consider the interests of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not.

The decision in *Lau Cher Hian's* case may attract some objection from purist jurists on account of some fettering tendency from the wording of subsection providing for enlargement of time; it has nevertheless, an incidental merit that it comes close to the popular notions of justice entertained by the man in the street. The Act, which is highly technical, provides by Form H, for a landowner to accept or refuse the offer of compensation, yet singularly fails to provide the landowner with the further information that in the event of his refusal, he can apply to have the matter referred to Court for its determination within six weeks etc. Landowners, especially those from the rural area, will very often be complacent in thinking that by stating their refusal to accept the offer, the next move would come from the collector and that they need do nothing in the meantime. Many a landowner has found himself time-barred in these circumstances. The decision clearly lays down in my view, that hardship, ignorance of law, *bona fide* mistake, combined with absence of any fault on the part of an applicant praying for extension of time, e.g. an applicant not sleeping on his rights, may constitute special circumstances sufficient for the Court to exercise its discretion to grant extension of time in such cases.

So long as nothing is done by the legislature for "the fundamentals of fair procedure" by the insertion of a clause advising landowners of the availability of the procedure of making an application for the matter to be referred to Court for its determination within six weeks etc. from the date of the award in Form H, and making it mandatory for a collector of land revenue to inform landowners at the enquiry of such right of such application, the Court shall continue to lend an ear to such pleas of hardship, ignorance of the law and *bona fide* mistake when applications for such extension of time are before the Court.

I ought to mention the case of *Ong Leong Seng & Anor.* (*supra*). The case is clear authority for a collector of land revenue to have no power to do anything in the nature of extending the time fixed by a provision similar to s. 38(3) of the Act on the ground the collector cannot waive such a failure to so apply to him in prescribed time; the Singapore Court of Appeal in so holding, followed the Indian Case of *In re Government v. Nanu Kothare & Ors.* ILR 30 Bom. 275. This *ratio decidendi*, if I may sound a caution, is of limited scope confined to the inability of a collector to dispense with the due compliance by a landowner of making his application within the prescribed time. It does not appear to be of universal application to other matters in the Act which remain to be considered on their own specific statutory provisions. This *ratio decidendi* appears to have been prompted by certain passage quoted by Thomson CJ (as he then was), in the Singapore Court of Appeal from the Privy Council case of *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan W.M. Bahadoor* 6 Moo IA 134, 155:

> Wherever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with jurisdiction does not arise.

Section 38(4) of the Act is consonant with the reasoning in *Ong Leong Seng's* case because the wording appears to suggest strongly that a Court ALONE can extend time when special circumstances exist and the word "Court" is defined in the Act as the High Court, so as to preclude any conceptual extension of the word "Court" to include a collector of land revenue.

Ong CJ in *Lau Cher Hian's* case declined to follow *Ong Leong Seng's* case because s. 19(4) of Singapore's Land Acquisition Ordinance then in force at that time provided:-

> The period of six weeks prescribed by para. (a) of subsection (3) and the periods of six weeks and twelve months prescribed by para. (b) of subsection (3) shall not be capable of enlargement by any Court.

The words in our present similar subsection, *viz:*

> ...except in such special circumstances as the Court may think fit.

were conspicuously missing from the subsection of the Singapore Ordinance set out above.

To revert to instant case, I find hardship, ignorance of law and *bona fide* mistake on the part of the applicants herein who are also found not to have been guilty of such fault as to disentitle them to the relief sought for. I therefore make an order that time for making an application to the respondent herein requiring the respondent to refer the matter of applicants to Court for its determination under s. 38(3)(a) of Land Acquisition Act, 1960 be extended by 21 days from today and that the applicants do deposit with the respondent such sum as may be required by the respondent under s. 39 of the Land Acquisition Act, 1960 as security for costs of reference and appeal and that respondent do pay costs of this motion.

Also found at [1985] 2 CLJ 482